

FILED

NOV 27 2012

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

ROBERT WEBB,)	CV 12-41-H-DLC-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
GAYLE LAMBERT, ROSS)	
WAGNER, DAVE MILLER, DAVE)	
SOLOMON, and GERALD)	
ROSELEIP,)	
)	
Defendants.)	
)	

United States Magistrate Keith Strong entered Findings and Recommendation on August 29, 2012, and recommended dismissing Mr. Webb's Complaint without prejudice. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d

1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Plaintiff Robert Webb, a state prisoner, was incarcerated at Montana State Prison when he filed the instant Complaint. He seeks damages for an injury he received at the Montana Correctional Enterprises dairy on December 29, 2011. Judge Strong found that Webb conceded that he did not file an administrative grievance regarding his claims and no exception applies in these circumstances. Further, Judge Strong found this case should be dismissed without prejudice for failure to exhaust administrative remedies.

After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (doc. 5) are adopted in full. The Complaint (doc. 2) is DISMISSED WITHOUT PREJUDICE.

The Clerk is directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk is further directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure

that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

DATED this 27th day of November 2012.

A handwritten signature in cursive script, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, District Judge
United States District Court